

CHICAGO AND



TRANSPORTATION COMPANY

8409-13
RECORDATION NO. Filed & Recorded

JUL 14 1976 -3 21 PM

July 9, 1976

File No.: A-98 33

Interstate Commerce Commission
Washington, D.C. 20423

Attn: Mr. Robert L. Oswald, Secretary

Dear Sir:

Enclosed for recordation pursuant to Section 20c
of the Interstate Commerce Act are counterparts of the follow-
ing:

8409/C
RECORDATION NO. Filed & Recorded

JUL 14 1976 -3 21 PM

INTERSTATE COMMERCE COMMISSION

(1) Conditional Sale Agreement dated as of June
15, 1976, between General Motors Corporation
(Electro-Motive Division), Vendor, and GMAC
Leasing Corporation, Vendee.

(2) Agreement and Assignment as of June 15, 1976,
between General Motors Corporation (Electro-
Motive Division), as builder, and American
National Bank and Trust Company of Chicago,
as Agent, Assignee, assigning the Conditional
Sale Agreement covered in (1) above.

(3) Lease of Railroad Equipment dated as of June
15, 1976, between Chicago and North Western
Transportation Company, Lessee, and GMAC
Leasing Corporation, Lessor.

(4) Assignment of Lease and Agreement, dated as
of June 15, 1976, between GMAC Leasing Corp-
oration, Lessor, and American National Bank
and Trust Company of Chicago, as Agent, Vendor,
assigning the Lease of Railroad Equipment
covered in (3) above.

G. L. VARGASON
BERNARD J. ALLEN
DIANE KOHLER-RAUSCH
ASSISTANT SECRETARIES

DIRECT DIAL NUMBER
312/454-6534

8409
Fee \$ 1005
RECORDATION NO. Filed & Recorded

ICC Washington, D. C. JUL 14 1976 -3 21 PM

INTERSTATE COMMERCE COMMISSION

8409-A
RECORDATION NO. Filed & Recorded

JUL 14 1976 -3 21 PM

INTERSTATE COMMERCE COMMISSION

Mr. Robert L. Oswald
Page 2
July 9, 1976

The addresses of the parties to the aforementioned agreements are:

Chicago and North Western
Transportation Company
400 West Madison Street
Chicago, Illinois 60606

American National Bank
and Trust Company of
Chicago
33 North LaSalle Street
Chicago, Illinois 60690

General Motors Corporation,
Electro-Motive Division
LaGrange, Illinois 60525

GMAC Leasing Corporation
767 Fifth Avenue
New York, N.Y.

The equipment covered by the aforementioned agreements consists of 14 1,500 horsepower diesel-electric locomotives, General Motors Model GP-15-1, bearing the road numbers of Chicago and North Western Transportation Company 4411 through 4424, and also bearing the legend "Ownership subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c."

Enclosed is our check for \$100.00 for the required recordation fee. Please accept for recordation two counterparts of each of the enclosed agreements, stamp the remaining counterparts with your recordation number and return them to the delivering messenger along with your fee receipt, addressed to the undersigned.

Very truly yours,



Diane Kohler-Rausch
Assistant Secretary

Mr. Robert L. Oswald

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July 9, 1976

cc:

Robert D. Smith

R. L. Schardt

F. E. Cunningham, Attn: H. Labno

R. F. Guenther, Attn: J. James

Z. Steiger

D. E. Stockham, Attn: R. S. Brenner

A.A. & Co.

DKR/rp

encls

8409 *B*

RECORDATION NO. Filed & Recorded

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INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of June 15, 1976

between

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

and

GMAC LEASING CORPORATION

Lease of Railroad Equipment

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LEASE OF RAILROAD EQUIPMENT dated as of June 15, 1976, between CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware corporation (hereinafter called the Lessee), and GMAC LEASING CORPORATION, a Delaware corporation (hereinafter called the Lessor).

WHEREAS the Lessor is entering into a conditional sale agreement dated as of the date hereof with General Motors Corporation (Electro-Motive Division), a Delaware corporation (hereinafter called the Builder), (such agreement being hereinafter called the Security Documentation), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule 1 hereto (hereinafter called the Equipment);

WHEREAS the Builder is assigning its interests in the Security Documentation to American National Bank & Trust Company of Chicago, a national banking association, acting as agent (hereinafter, together with its successors and assigns, called the Vendor) under a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement) with the Lessee and the parties named in Exhibit A thereto;

WHEREAS the Lessee desires to lease such number of units of the Equipment as are delivered and accepted and settled for under the Security Documentation (hereinafter called the Units) at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Documentation, or against the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obliga-

tions of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Security Documentation. The Lessor will cause the Units to be delivered to the Lessee at the point within the United States of America at which the Units are delivered to the Lessor under the Security Documentation. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and the Lessee shall execute and deliver to the Lessor a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the provisions of Article 3 of the Security Documentation, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to

all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the Security Documentation pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease.

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, 61 consecutive payments payable (i) on the first day of the month following the month in which the Closing Date (as such term is defined in the Security Documentation) occurs and (ii) on each quarterly anniversary of such first payment date to and including the 60th quarterly anniversary thereof. The rental payment which is due and payable pursuant to clause (i) of the preceding sentence shall be in an amount equal to 9.75% of the product of (x) a fraction the numerator of which is the number of days elapsed from the Closing Date (including such date) through the end of the month in which the Closing Date occurs and the denominator of which is 360, and (y) the Purchase Price (as such term is defined in the Security Documentation) of all Units then subject to this Lease. The rental payments due and payable pursuant to clause (ii) of the first sentence of this paragraph shall be in an amount equal to 2.574500% of the Purchase Price of all Units then subject to this Lease; provided, however, notwithstanding any other provision hereof, to the extent that the Lessee shall be denied possession of a Unit or Units because of the occurrence of a default under the Security Documentation which is not an Event of Default (as such term is hereinafter defined) under this Lease, the Lessee shall have no further obligation to make any additional rental payments for such Unit or Units with regard to periods subsequent to its loss of possession of such Unit or Units.

The rental payments hereinbefore set forth are subject to adjustment pursuant to § 16 hereof.

If any of the rental payment dates referred to above is not a business day the rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, are authorized or obligated to remain closed.

Except to the extent the right to receive payments

under this Lease has been reserved by the Lessor pursuant to paragraph 1 of the Assignment of Lease and Agreement which appears as Annex D to the Security Documentation (hereinafter called the Lease Assignment), the Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 7 hereof, at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the Security Documentation, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default under the Security Documentation shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in Federal or other funds immediately available to the Vendor (or to the extent payable to the Lessor pursuant to paragraph 1 of the Lease Assignment to the Lessor) by 11:00 a.m., Chicago time, on the date such payment is due.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7 and 10 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 9 and 14 hereof) shall survive the expiration of the term of this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the Security Documentation. If an event of default should occur under the Security Documentation, the Vendor may terminate this Lease (or rescind its termination), all as provided therein.

§ 5. Identification Marks. The Lessee (at its own expense) will cause each Unit to be kept numbered with the road number set forth in Schedule 1 hereto, or in the case of any Unit not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this

Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c", "GMAC Leasing Corporation Owner/Lessor; Bank or Trust Company Security Owner under a Security Agreement Filed under the Interstate Commerce Act, Section 20c" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease and of the rights of the Vendor under the Security Documentation. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Documentation shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to such effect. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, Federal, or foreign taxes (other than any United States Federal income tax payable by the Lessor in consequence of the receipt of payments provided for herein and, to the extent that the Lessor receives credit therefor against its United States Federal income tax liability, any foreign income tax, other than any state or local income tax attributable to intercompany profit on the transaction within the Lessor's affiliated group, and other than the aggregate of

all state or local taxes measured by net income based on such receipts and value added taxes in lieu of such net income taxes up to the amount of any such taxes determined by Lessor from its nation-wide effective rate for state and local taxes as used by Lessor in originally evaluating this transaction, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Documentation, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the interest of the Lessor or result in a lien upon any such Unit. Lessee will also pay promptly to Lessor all state franchise taxes measured by capital stock, net worth, or total assets which may be imposed on Lessor due to the receipt of payments and/or ownership of the Equipment under this lease (such franchise taxes shall also be deemed impositions hereunder); provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as such imposition remains unpaid and Lessee is contesting in its own name and in good faith and by appropriate legal or administrative proceedings such impositions, or the Lessor is required to contest such impositions as provided in this Section 6, and the nonpayment thereof does not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or the Lessor or the Vendor under the Security Documentation. The Lessee agrees to give the Lessor notice of such contest brought in Lessee's name within 30 days after institution thereof and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall pay the Lessor on presentation of an invoice

therefor if the Lessor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Lessor) or the Lessee shall have approved the payment thereof, and the Lessor agrees to give the Lessee written notice promptly after it first obtains knowledge of the making of such charge or levy, and agrees to take such other action as may reasonably be requested by the Lessee for the purpose of contesting payment or obtaining refund of all or a portion of such imposition, as hereinafter provided in this Section 6.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any correlative provision of the Security Documentation not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor to fulfill completely its obligations pursuant to said provision; provided, however, that the Lessor shall have contested (if required to do so under this Section 6) such impositions in good faith and to the extent permitted under the Security Documentation.

In the event any returns, statements or reports with respect to impositions involving any Unit are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Vendor in such Units, as shall be satisfactory to the Lessor and the Vendor or, where not so permitted, will notify the Lessor and the Vendor of such requirement and will prepare and deliver such reports to the Lessor and the Vendor within a reasonable period of time prior to the time such reports are to be filed in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

In the event the Lessee may be prohibited by law from contesting in its own name any imposition covered by this § 6 in respect of which the Lessee would otherwise be required to make payments to the Lessor pursuant hereto, the Lessor shall, upon request and at the expense of the Lessee, contest such matter in good faith in such forum as it, in its sole

judgment, shall select; provided, however, Lessor will not be required to contest the imposition if in the opinion of Lessor no reasonable argument of substance can be advanced to enter into such contest. In such case, Lessor must give notice to Lessee of Lessor's intention not to contest and Lessee may challenge Lessor's opinion by engaging, at its expense, independent tax counsel, mutually agreed upon, to determine if there is a reasonable basis to contest. If Lessee fails to challenge within 30 days after notice of Lessor's opinion or if such independent tax counsel concurs with the Lessor, Lessee agrees to pay the imposition to the proper taxing jurisdiction and Lessee has no further right of contest. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein. Further, the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action taken by the Lessor or Lessee under this § 6. The Lessee shall be entitled to any refund received by the Lessor or the Lessee in respect of any imposition paid by the Lessee, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

The amount which the Lessee shall be required to pay with respect to any imposition which is subject to indemnification under this § 6 shall be an amount sufficient to restore the Lessor to the same position, after considering the effect of the receipt of such indemnification by the Lessor on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that the Lessor would have been in had such imposition not been imposed so as to maintain the Lessor's net return after taxes on the same basis (including tax rates) as used by the Lessor in originally evaluating this transaction (hereinafter called Lessor's Net Return).

For purposes of this § 6 the term "Lessor" shall include any member of an affiliated group, within the meaning of Section 1504 of the Internal Revenue Code, of which the Lessor is a member if consolidated returns are filed for such affiliated group for Federal income tax purposes.

§ 7. Maintenance; Casualty Occurrences; Insurance. The Lessee agrees, during the term of this Lease, at Lessee's own cost and expense to maintain and keep all of the Units in good operating order, repair and condition in accordance with the standards prescribed by the Builder in its applicable locomotive service manuals and maintenance instructions covering the respective Units and that any replacement power components (such as engines, transmissions and parts thereof) shall be in accordance with the Specifications (as such term is defined in Article 2 of the Conditional Sale Agreement); provided, however, that the Lessee will at all times maintain each of the Units at least as well as it maintains comparable locomotives owned by it and in any event in accordance with the same standard of maintenance as utilized by the Lessee in respect of similar equipment owned by the Lessee which standards, in respect of the Units, shall be at least as high as the standards of maintenance for similar equipment of other well maintained railroads in the United States (hereinafter called the Standard). If the Lessor upon inspection notifies the Lessee in writing (hereinafter called the First Notice) that it believes any of the Units are not being maintained according to the Standard, specifying the particulars thereof, the Lessee shall forthwith cause the necessary maintenance to be performed in order to bring the Units in accordance with the Standard within 150 days unless the Lessee notifies the Lessor in writing (hereinafter called the Reply) within 25 days after receipt of the First Notice that the Lessee does not agree with the particulars set forth in the First Notice. If the Lessee does not agree with the particulars, the Lessor and the Lessee shall each appoint an expert in railroad equipment maintenance and standards within 15 days after the Reply is given, and the two experts so appointed shall within 25 days after such Reply is given appoint a third expert (hereinafter called the Third Expert) in railroad equipment maintenance and standards. If no such Third Expert is appointed within 25 days after the Reply is given, either party may apply to make such appointment to the American Arbitration Association, and both parties shall be bound by any appointment so made. The Third Expert appointed pursuant to the foregoing procedure shall be instructed to

determine within 30 days after his appointment whether the Units mentioned in the First Notice comply with the Standard and, if they do not, the particulars of such noncompliance. If either party shall have failed to appoint an expert, the other expert shall appoint the Third Expert and the determination of the Third Expert shall be final. The determination whether the Units have been maintained according to the Standard shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. In the event the Third Expert's determination is that the Unit has not been maintained in accordance with the Standard, the Lessee shall forthwith cause the necessary maintenance to be performed in order to bring the Unit in accordance with the Standard within 150 days from the date of the First Notice; provided, however, that the period for compliance shall be extended for delays in receiving the necessary parts or materials and other delays beyond the Lessee's reasonable control. The provision for this determination shall be the exclusive means of determining whether the Units comply with the Standard and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expense of such procedure shall be borne equally by the Lessee and the Lessor.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, returned to the Builder pursuant to the patent indemnity provisions of the Security Documentation, or taken or requisitioned by condemnation or otherwise by the United States Government or any political subdivision thereof for a stated period which shall exceed the then remaining term of this Lease or for an indefinite period, but only when such period shall exceed the term hereof, or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days (such occurrences being hereinafter called Casualty Occurrences), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule referred to below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in

the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit and the Lessee shall pay all costs of removal of such Unit and of freight to the place designated pursuant to § 14 hereof. The Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit returned to the Builder pursuant to the patent indemnity provisions of the Security Documentation an amount equal to any payment made by the Builder to the Vendor in respect thereof under the Security Documentation.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule 2 hereto opposite such date.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to the greater of (i) 20% of the Purchase Price of such Unit and (ii) the fair market value of such Unit immediately prior to the Casualty Occurrence. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessor shall be entitled to recover possession of such Unit and the Lessee shall pay all costs of removal of such Unit and of freight to the place designated pursuant to § 14 hereof.

The Lessor may appoint the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. If the Lessor does not so appoint the Lessee as its agent, the Lessee shall have a right of first refusal to purchase such Unit. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition for use by the United States Government or any political subdivision thereof (hereinafter called the Government) of any Unit during the term of this Lease all of the Lessee's obligations under this

Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease, but the Lessee shall in all other respects comply with the provisions of said § 11 or 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease, shall be paid over to, or retained by, the Lessor.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times prior to the return of the Equipment to the Lessor, at its own expense, cause to be carried and maintained property insurance and public liability insurance in respect of the Units at the time subject hereto, in amounts (subject to customary deductibles) and against risks customarily insured against by railroad companies in respect of similar equipment, and, in any event, comparable in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned by it; provided, however, at any time that the Lessee's net worth as reported in its periodic statement to shareholders is less than \$25,000,000, the Lessee will, at its own expense, cause to be carried and maintained such appropriate property damage and public liability insurance as is acceptable to the Lessor. If the Lessor shall receive any insurance proceeds from the Lessee's insurance coverage or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such pro-

In the event that a Unit suffers a Casualty Occurrence due to a taking or requisitioning by any governmental entity and the Lessee pays the Casualty Value thereof, the Lessee shall be entitled to all condemnation and any other compensation paid by such governmental entity for the loss of possession, use or condition of such Unit up to an amount which when added to the payment, if any, received by the Lessee pursuant to clause (a) or (b) of the last sentence of this paragraph, is equal to the Casualty Value of such Unit, and the Lessor shall be entitled to any excess.

ceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor from the Lessee's insurance coverage in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

[^]In the event such Unit is recovered by the Lessor, the Lessor shall promptly give the Lessee written notice of recovery of such Unit and the Lessee shall have an option, exercisable not later than 30 days after such notice, to purchase such Unit for Fair Market Value (as defined in § 13 hereof), and if the Lessee exercises such option, the Lessee shall be entitled to credit against the sale price the amount that would be payable by the Lessor to the Lessee pursuant to clause (b) of the last sentence of this paragraph and shall be entitled to immediate possession and use of such Unit pending closing of such sale. If the Lessor and the Lessee are unable to agree upon a determination of Fair Market Value, such value shall be determined in accordance with the provisions of the last paragraph of § 13, and the Lessee shall pay the Lessor within 10 days after such determination of Fair Market Value the amount, if any, by which Fair Market Value exceeds the amount payable by the Lessor to the Lessee pursuant to said clause (b). In the event the Lessee does not exercise its option to purchase a recovered Unit, the Lessor shall either (a) offer such Unit for sale within 30 days of recovery and shall pay to the Lessee upon the sale of such Unit an amount equal to the lesser of (i) the proceeds from the sale of such Unit, or (ii) the excess, if any, of the Casualty Value of such Unit over the compensation, if any, received by the Lessee for loss of possession, use or condition of such Unit, or (b) in the event the Lessor does not offer the Equipment for sale, the Lessor shall pay to the Lessee within 10 days after the determination of Fair Market Value, an amount equal to the lesser of (i) the Fair Market Value (as defined in § 13 hereof) of such Unit or (ii) the excess, if any, of the Casualty Value of such Unit over the compensation, if any, received by the Lessee for loss of possession, use or condition of such Unit. *gms*

§ 8. Reports and Inspection. On or before April 30 in each year, commencing with the calendar year 1977, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documen-

tation, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the Security Documentation have been preserved or replaced. The Lessor, at its sole cost and expense, shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

The Lessee shall furnish to the Lessor the reports required to be furnished to the Lessor pursuant to Paragraph 8 of the Participation Agreement.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR AS TO THE LESSEE'S RIGHT TO QUIET ENJOYMENT THEREOF (EXCEPT AS TO ACTS OF THE LESSOR), OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A of the Security Documentation; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged

to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units and with all applicable interchange rules, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal thereof, such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documentation. The Lessee, at its own cost and expense, may furnish other additions, modifications and improvements to the Units during the term of this Lease provided that such additions, modifications and improvements are readily removable without causing material damage to the Units. The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee and (subject to the Lessor's option to purchase such additions set forth in Section 13 of this Lease) may be removed by the Lessee at any time during the term of this Lease or any renewal thereof.

The Lessee agrees to indemnify, protect and hold

harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of or the occurrence of a default, an event of default or an Event of Default under the Security Documentation, the Participation Agreement, this Lease, or any sublease entered into pursuant to Section 12 hereunder, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease or the transfer of title to the Equipment by the Vendor pursuant to any provision of the Security Documentation. The indemnities arising under this paragraph shall continue in full force and effect with respect to all events, facts, conditions or other circumstances occurring or existing prior to the expiration or termination of the term of this Lease and return of the Units as provided in § 14 of this Lease; provided, however, that the foregoing indemnification shall not apply to any failure of payment of the principal of or interest on the Conditional Sale Indebtedness and shall not be deemed to operate as a guaranty of the residual value of any Unit. The amount the Lessee shall be required to pay with respect to any of its obligations under this paragraph shall include a payment to the indemnified party sufficient to restore such party to the same position, after considering the effect of such payment on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that the indemnified party would have been in had the liability or expense indemnified against not been incurred.

The Lessee shall not be released from its obligations hereunder in the event of any damage to or the destruction or loss of any or all of the Units of Equipment.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor

or the Vendor of the Units or the leasing thereof to the Lessee.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an Event of Default) shall occur:

A. default shall be made in payment of any amount provided for in § 3 or § 7 of this Lease and such default shall continue for five business days, or default shall be made in payment of any other amount provided for in this Lease and such default shall continue for five days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof and shall fail or refuse to cause such assignment or transfer to be canceled by agreement of all parties having any interest therein and to recover possession of such Units within 15 days after written notice from the Lessor to the Lessee demanding such cancellation and recovery of possession;

C. the insurance required to be maintained by the Lessee pursuant to § 7, shall for any reason not remain in full force and effect or be taken out as therein provided;

D. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement or the Purchase Commitment (as such term is defined in the Participation Agreement), and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay

shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

F. any other proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after-tax losses of federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clause of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses

incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. Return of Units Upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessor may, upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Lessor, take or cause to be taken by its agent or agents, immediate possession of each of the Units, or one or more of the Units and may remove the same from possession and use of the Lessee or any other person and for such purpose may enter upon the premises of the Lessee or any other premises where the Units may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Lessee, subject to all mandatory requirements of due process of Law.

If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner place such

Units upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which the product of (i) a fraction the numerator of which is the greater of 135% of the Prime Rate or 10-3/4% and the denominator of which is 360, and (ii) the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day. For purposes of the paragraph and of § 14 and § 17, "Prime Rate" shall mean the rate of interest per annum established from time to time and quoted to General Motors Acceptance Corporation for demand loans by a majority of the twelve largest commercial banks operating in the United States.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority,

at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's assigns.

So long as the Lessee shall not be in default under this Lease and no event of default shall exist under the Security Documentation, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease but, without the prior written consent of the Lessor and the Vendor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. Notwithstanding the provisions of the preceding sentence, so long as no Event of Default shall have occurred and be continuing and subject to the consent of the Lessor and the Vendor, which consent shall not be unreasonably withheld, and subject to the other restrictions contained in this § 12, the Lessee shall be entitled to sublease Units to responsible sublessees or assign its leasehold to any company acquiring (by purchase, merger, consolidation or otherwise) or leasing all or substantially all of its railroad lines, but no such sublease or assignment will release the Lessee's obligations from any of its obligations hereunder; provided, however, that the consent of the Lessor and the Vendor shall not be required for subleases not in excess of three months duration. Any purported assignment or sublease in violation of this Section 12 shall be void and of no force and effect.

The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by this § 12.

So long as the Lessee shall not be in default under this Lease and no event of default shall exist under the Security Documentation, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and conditions of this Lease and the Security Documentation; provided, however, that the Lessee shall not assign or permit the assignment of any Unit to service involving the operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units. The Lessee represents and warrants to the Lessor that the Units will be used, and are intended for use, in connection with interstate commerce.

§ 13. Lessee's Rights of First Refusal. Not earlier than 360 days nor later than 120 days prior to the expiration of the original term of this Lease and not later than 120 days prior to the expiration of the term of each lease entered into pursuant to the Lessee's right of first refusal or option to lease as hereinafter provided (each such expiration date being hereinafter called the Expiration Date), and provided that this Lease or such other lease has not been earlier terminated and that the Lessee is not then in default hereunder or thereunder (each such event being hereinafter called a Disqualification), the Lessor shall notify the Lessee in writing if it has elected to sell the Equipment. In the event the Lessor elects to sell the Equipment, the Lessee (provided there is then no Disqualification) shall have a right of first refusal to purchase the Equipment at the same price (which price shall in no event be less than Fair Market Value as hereinafter determined) and upon the same terms as are offered to the Lessor by any other party in an arm's length transaction and are acceptable to the Lessor,

exercisable within 30 days after written notice to the Lessee specifying the sale price and terms of such offer; provided, however, that no such sale shall occur prior to the expiration of the original term of this Lease; and provided, further, that if the Lessor fails to receive such an acceptable offer and notifies the Lessee in writing at least 90 days prior to the Expiration Date that it still desires to sell the Equipment, then the Lessee (provided there is then no Disqualification) shall have an option, exercisable not later than 30 days after such written notice, to purchase the Equipment at a price equal to Fair Market Value payable on the Expiration Date. In the event the Lessor does not notify the Lessee in writing of an acceptable offer to purchase nor within 90 days prior to the Expiration Date confirm its intention to sell or if the Lessor notifies the Lessee in writing not earlier than 360 days and not later than 90 days prior to the Expiration Date that it has elected to lease the Equipment, then the Lessor will, not earlier than the date of such notice of intent to lease nor later than 90 days prior to the Expiration Date, offer the Equipment for lease for a term not less than eighteen months commencing on the Commencement Date (as hereinafter defined) and the Lessee (provided there is then no Disqualification) shall have a right of first refusal to lease the Equipment upon the same terms and conditions (which would include a rental rate that shall in no event be less than Fair Market Rental) as are offered to the Lessor by any other party in an arm's length transaction and are acceptable to the Lessor (hereinafter called the Proposed Lease), exercisable within 30 days after written notice to the Lessee specifying the terms of such offer; provided, however, that if the Lessee elects to exercise its right of first refusal to lease on the same terms and conditions offered by such other party, the Lessee can reserve its right of first refusal or option to purchase or lease in the Proposed Lease provided the Lessor's right to offer the Equipment for sale and terminate such Proposed Lease during the term thereof is also reserved; and provided, further, that if the Lessor fails to receive an acceptable lease offer from any such other party or fails to notify the Lessee in writing at least 60 days prior to the Expiration Date that it has received such an acceptable lease offer and specifying the terms thereof, then the Lessee (provided there is then no Disqualification) shall have an option, exercisable not later than 30 days prior to the Expiration Date, to lease the Equipment commencing on the day following the Expiration Date for a term not less than eighteen months nor more than seven years, to be specified by the Lessor, at Fair Market Rental

(Fair Market Rental being always determined on the basis of the term and other terms and conditions of the lease being considered) and otherwise upon the same terms and conditions as provided in this Lease, except that the Lessor shall also be entitled to specify different but reasonable deductible amounts in the Lessee's insurance coverage (limits and other insurance terms to be the same as those required by this Lease) if under the circumstances the Lessor reasonably believes that the deductibles applicable to the property and public liability insurance then maintained by the Lessee are not appropriate. The Commencement Date of the first and each successor lease to the Lessee pursuant to its right of first refusal or option to lease shall be the day after the Expiration Date of the lease succeeded thereby, and the Commencement Date of any lease to any other party shall be no sooner than the earlier of (i) the date on which the Lessee delivers possession of the Equipment to the Lessor after the Expiration Date of a lease to the Lessee or (ii) the 60th day after such Expiration Date. The Lessee agrees that each lease entered into pursuant to the Lessee's option to lease and (to the extent the Proposed Lease so provides) each lease entered into pursuant to the Lessee's right of first refusal, shall provide that if during the term thereof but not later than 120 days prior to the Expiration Date, the Lessor elects to sell the Equipment, such lease with the Lessee may be terminated on the date specified by the Lessor by written notice to the Lessee at least 60 days prior to such termination date, subject only to the right of first refusal or option of the Lessee to purchase the Equipment as provided in this § 13.

The Lessor, at its option, may elect not to solicit offers to purchase or lease the Equipment and to notify the Lessee in writing not earlier than 360 days nor later than 120 days prior to the Expiration Date of this Lease, and not later than 120 days prior to the Expiration Date of each lease entered into pursuant to the Lessee's option to lease and (to the extent the Proposed Lease so provides) each lease entered into pursuant to the Lessee's right of first refusal, that the Equipment is offered by the Lessor for purchase by the Lessee (but not prior to the Expiration Date of this Lease) or for lease to the Lessee commencing after the Expiration Date, all in accordance with the terms and conditions of the Lessee's Fair Market Value or Fair Market Rental options provided for in the first paragraph of this § 13 (the Lessor specifying the option that applies), and the Lessee shall

be deemed to have elected not to exercise the specified option unless within 60 days after such written notice from the Lessor, the Lessee notifies the Lessor in writing that it has elected to exercise such option upon the terms and conditions thereof provided in the first paragraph of this § 13.

If the Lessee exercises its option to purchase or lease the Equipment and a determination of Fair Market Value or Fair Market Rental, as the case may be, is neither agreed to by the Lessor and the Lessee nor obtained by appraisal (as provided in the last paragraph of this § 13) prior to the Expiration Date, then the Lessee, on the Expiration Date in case of a purchase, shall pay to the Lessor as an advance payment against the to be determined Fair Market Value an amount equal to the Casualty Value of the Equipment on that date, or, on each rental payment date after the Expiration Date, in case of a lease, shall pay to the Lessor an advance quarterly rental payment per Unit against the to be determined Fair Market Rental equal to 1.287250% of the Purchase Price of such Unit, in each case subject to adjustment to reflect the final determination of Fair Market Value or Fair Market Rental. Not later than 10 business days after such final determination is made, the Lessee shall pay to the Lessor the amount, if any, by which the Fair Market Value or Fair Market Rental as so determined exceeds the advance payments or rentals paid by the Lessee, as the case may be, together with interest at the Prime Rate calculated from the dates on which the advance payments or rentals were made, and the Lessor shall pay to the Lessee the amount, if any, by which the advance payments or rentals paid by the Lessee exceed Fair Market Value or Fair Market Rental, as the case may be, together with interest at the Prime Rate calculated from the dates on which the advance payments or rentals were made.

Anything in this Lease to the contrary notwithstanding, reference in this Section 13 to the Equipment shall be understood to mean any one or more Units of the Equipment.

If at any time the Lessor elects to sell the Equipment and the Lessee does not exercise its option to purchase Units pursuant to this Section, the Lessor shall be entitled to purchase from the Lessee at Fair Market Value any additions to the Units being sold which the Lessee is entitled to remove pursuant to the last sentence of the second paragraph of Section 9 of this Lease.

Upon payment of the purchase price of any Unit, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Vendor, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

Fair Market Rental and Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the rental or purchase price, as the case may be, which would obtain in an arm's-length transaction between an informed and willing lessee or purchaser (other than a lessee or purchaser, as the case may be, currently in possession) and an informed and willing lessor or seller, as the case may be, under no compulsion to lease or sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental or purchase price and there shall be excluded any rental or purchase value attributable to additions which the Lessee is entitled to remove pursuant to the last sentence of the second paragraph of Section 9 of this Lease; provided, however, that Fair Market Rental shall be determined as provided in the preceding sentences on the basis of the term and other terms and conditions of the lease being considered.

If, after 45 days from the giving of notice by the Lessee of the Lessee's exercise of an option to buy the Equipment at Fair Market Value or to lease the Equipment at Fair Market Rental, as provided in the first or second paragraph of this § 13, the Lessor and the Lessee are unable to agree upon a determination of Fair Market Value or Fair Market Rental, as the case may be, such values shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 35 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 business days after such notice is given, either party may

apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental or Fair Market Value and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

§ 14. Return of Units upon Expiration of Lease Term. The Lessor intends to sell or lease the Units at the expiration of the term of this Lease. As soon as practicable on or after the expiration of the original term of this Lease with respect to any Unit not purchased by the Lessee pursuant to § 13, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessor may reasonably designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding six months and transport the same, at any time within such six-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee; and in the event that any Unit shall suffer a Casualty Occurrence during such storage period, the Lessee shall pay the Lessor the Casualty Value thereof set forth in Section 7 hereto. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any pro-

spective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, lessee or user, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, and (ii) except for additions which the Lessee is entitled to remove under the provisions of § 9 of this Lease, meet all operating standards then in effect under the applicable rules of any governmental agency or other organization with jurisdiction. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which the product of (i) a fraction the numerator of which is the greater of 135% of the Prime Rate or 10-3/4% and the denominator of which is 360, and (ii) the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the Security Documentation and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Documentation and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Ven-

dor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documentation and the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Documentation shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 16(a). Income Taxes. I. Tax Assumptions. It is the intent of the parties to this Lease that it will be recognized as a lease for all Federal, state, city and local income taxes or franchise taxes imposed on or measured by net income, and that this Lease does not convey to the Lessee any right, title or interest in the Units except as lessee. In accordance with that intent this Lease and the Security Documentation have been entered into on the assumptions (each assumption hereinafter called the "Tax Assumptions") that for United States income tax purposes (and to the extent applicable for state and local tax purposes) (A) the Lessor, as the owner of the Units, will be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the "Code"), to an owner of property, including, without limitation (1) the maximum depreciation deduction with respect to the Units authorized under Section 167 of the Code (hereinafter called the "ADR Deduction"), (a) utilizing a 12-year depreciable life, which is the lower limit listed in Revenue Procedure 72-10, 1972-1 C.B. 721, for property in Asset Guideline Class No. 00.25, in accordance with the Class Life Asset Depreciation Range System described in Section 167(m) of the Code and the Treasury Regulations promulgated thereunder as in effect on the date hereof, (b) employing initially the 200% declining balance method of depreciation with a change, not requiring the consent of the Commissioner of Internal Revenue, to the sum of the years-digits method of depreciation when most beneficial to the Lessor, (c) utilizing the half-year convention as provided in Reg. Sec. 1.167(a)-11(c)(2)(iii), (d) including in the basis of the Units the entire Purchase Price thereof and all other items properly includible under Section 1012 of the Code (hereinafter called the "Basis"), and (e) taking into account a salvage value (after the reduction allowed by Section 167(f) of the Code) of 10% of the Purchase Price of the Units; (2) deductions

with respect to interest payable under the Security Documentation pursuant to Section 163 of the Code (hereinafter called the "Interest Deduction"); and (3) the 10% investment credit with respect to 100% of the Builder's cost of the Units, which cost shall not include any gain or loss realized by the Builder in the Intercompany Transaction defined in clause (D) of this paragraph (hereinafter called the "Investment Credit"), pursuant to Section 38 and related sections of the Code; (B) the Units of Equipment will have a value at the termination of this Lease of at least 20% of the Purchase Price thereof; (C) all amounts includible in gross income by the Lessor with respect to this Lease will be treated as income from sources within the United States; (D) the sale of the Units by Builder to Lessor is an Intercompany Transaction as defined in Reg. Sec. 1.1502-13(a)(1) and the Builder will report its manufacturer's profit on the transaction on a deferred basis in accordance with Reg. Sec. 1.1502-13(d) (hereinafter called the "Intercompany Transaction").

II. Basic Indemnity. The Lessee represents, warrants and indemnifies that (i) on the Closing Date (as defined in Article 4 of the Security Documentation), all the Units constitute property the entire basis of which (up to the amount of the Builder's cost computed as provided in the first paragraph of this § 16(a)) qualifies for the 10% Investment Credit under Sections 38, 46, 48 and 50 of the Code; (ii) on the Closing Date, the Units will constitute "new section 38 property" within the meaning of Sections 46 and 48 of the Code, and at the time the Lessor becomes the owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with the Lessor; (iii) on the Closing Date, and at all times thereafter during the term of this Lease, the Units will qualify for the ADR Deduction using the Tax Assumption as to useful life and salvage value as set forth in 1(a) and 1(e) of the first paragraph of this Section 16(a), and on the Closing Date the Units will qualify for the maximum ADR Deduction using the Tax Assumption as to depreciation methods set forth in 1(b) of the first paragraph of this Section 16(a); (iv) the Lessee will not at any time during the term of this Lease use or fail to use any Unit in such a way as to disqualify it as "section 38 property" within the meaning of Section 48(a) of the Code or as property eligible for the ADR Deduction; (v) the Lessee will maintain sufficient records to verify such use, which records will be furnished to the Lessor within 30 days after receipt of a written demand

therefor; and (vi) all items includible in gross income by the Lessor and all deductions allowable to the Lessor with respect to the Units and this Lease will be treated as derived from, or allocable to, sources within the United States; and (vii) assuming the transaction qualifies as an Intercompany Transaction for tax purposes, the Builder will be permitted to report its manufacturer's profit under the Consolidated Return Regulations in effect at the time of delivery of the Units.

Except as otherwise provided in the last paragraph of this § 16(a), the Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action (other than any action required by the terms of this Lease) or file any tax returns or other documents inconsistent with the foregoing or which would increase the amount of rentals required to be taken into income by the Lessor over the amount specified to be payable under this Lease on the dates due hereunder except as specifically provided in this Lease, and that each of such corporations will file such returns, take such action, and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. The Lessee agrees to keep and make available for inspection and copying upon demand by the Lessor such records as will enable the Lessor to determine the extent to which it is entitled (A) to the full benefit of the ADR Deduction, the Interest Deduction and the Investment Credit with respect to the Units, and (B) to treat amounts includible in gross income with respect to this Lease as income from sources within the United States.

The Lessee also agrees to indemnify the Lessor, as provided for in the seventh paragraph of this § 16(a), for any Loss, reduction or delay in tax benefits caused by any act or omission of the Lessee or representations and warranties set forth in the preceding paragraphs of this § 16(a). Further, the Lessee will indemnify the Lessor if the deductions, credits or other tax benefits to which the Lessor would otherwise have been entitled to are decreased by a change in law that is enacted or becomes effective prior to the delivery of the Units of Equipment.

The Lessee agrees that it will join in any request of the Lessor for a Ruling from the Internal Revenue Service, and will furnish such documents, records and representations (including, but not limited to, evidence of the useful life

and residual value of the Units sufficient to support the matters claimed in such request) as shall be deemed necessary and appropriate for such request by the Lessor.

III. Pre-Ruling Indemnity. The Lessee represents, warrants and indemnifies that the transaction is a true lease for tax purposes and that for tax purposes the Lessor is the owner of the Units and as such is entitled to claim the Investment Credit, the ADR Deduction and the Interest Deduction and, that assuming the transaction qualifies as an Intercompany Transaction for tax purposes, the Builder will be permitted to report its manufacturer's profit under the Consolidated Return Regulations in effect at time of delivery of the Units, as these Tax Assumptions are set forth in the first paragraph of this Section 16(a). The Pre-Ruling Indemnity will terminate only when and if a favorable tax ruling is received by the Lessor.

IV. Effect of Indemnities. The Lessee's indemnification of the Lessor under the Basic Indemnity and/or the Pre-Ruling Indemnity, as described above, will place the Lessor and its affiliated companies in the same position with respect to the transaction as if the condition indemnified against had not existed. If (a) for any reason (except as a direct result of the occurrence of any Excluded Event set forth below) prior to the Lessor's obtaining a favorable ruling (herein called the Ruling) from the Internal Revenue Service to the effect that it is the owner of the Units and that the transaction is a true lease for tax purposes and as to its right to claim the Investment Credit, the ADR Deduction (other than salvage value) and the Interest Deduction, and the Builder shall report its profit for tax purposes under the Consolidated Return Regulations (the Pre-Ruling Indemnity), the Lessor shall lose, or shall not have, or shall lose the right to claim, or shall suffer a disallowance of, or shall be required to recapture (any such event being hereinafter called a Loss), all or any portion of the Investment Credit, the ADR Deduction, or the Interest Deduction or the Builder shall be required to report its profit in a manner other than that provided for as to Intercompany Transactions under the Consolidated Return Regulations (hereinafter each called a Benefit) with respect to all or part of any Unit or (b) subsequent to the receipt of the Ruling and under the Basic Indemnity, the Lessor shall incur a Loss with respect to any Unit due to (i) the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee (or any officer, agent or employee

thereof or of any affiliated company thereof) in connection with the application for the Ruling, (ii) the noncompliance, breach, or misrepresentation by the Lessee with or of any provision of the second, third, or fourth paragraphs of this § 16(a), (iii) the use of any Unit by the Lessee in such a way as to disqualify it as section 38 property within the meaning of Section 48(a) of the Code or as property eligible for the ADR Deduction, or (iv) any actions or omissions by the Lessee, except any actions or omissions permitted by the terms of this Lease; provided, however, for this purpose only, the exercise by the Lessee of the option contained hereunder regarding a single payment will not be treated as an action or omission permitted by the terms of this Lease; then in any such case of Loss of Benefit (either under the provisions of (a) or (b) of this paragraph), subject to the provisions of paragraph fourteen of this § 16(a) dealing with contesting a loss of the right to claim a tax Benefit and paragraph nine of this § 16(a) dealing with contesting a disallowance or recapture of a tax Benefit, unless the option pursuant to the proviso contained hereinafter in this paragraph is exercised by either the Lessee or the Lessor, the rental rate applicable to such Unit set forth in Section 3 of this Lease shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor that such Benefit cannot be claimed by the Lessor, or the Benefit was claimed by the Lessor and then disallowed or required to be recaptured, on and after the next succeeding rental date after payment of the tax attributable thereto, be increased by such amount for such Unit as, in the reasonable opinion of the Lessor, will maintain the Lessor's Net Return (as defined in § 6 hereof) in respect of such Unit under this Lease, and the Lessee shall forthwith pay to the Lessor the amount of any interest and penalty which may be assessed by the United States (or where applicable by any state or local taxing jurisdiction) against the Lessor attributable to the disallowance, recapture or loss of all or any portion of the Benefit; provided, however, that in the event of any Loss of any Benefit, in lieu of having the rentals increased as hereinabove provided, either the Lessor or Lessee shall have the option to have the Lessee pay to the Lessor in a single payment an amount equal to the tax attributable to such Loss of Benefit which the Lessor is required to pay to any taxing jurisdiction. Such payment is due from Lessee on the date Lessor makes payment to such taxing jurisdiction, together with payment of an additional amount equal to any interest and/or penalties which may be assessed by the taxing jurisdiction against the Lessor attributable to such Loss.

In subsequent years, if due to a Loss of Benefit in an earlier year the Lessor's Net Return is reduced by reason of a related Loss of Benefit in such subsequent year, the Lessee shall pay to the Lessor on the date or dates the Lessor would have normally received such Benefit in said subsequent year an amount equal to the tax attributable to the said Loss of Benefit. In the event the option contained in this proviso is elected by either Lessor or Lessee and Lessee has made payment as provided above, then, if, when, and to the extent Lessor subsequently receives a tax Benefit attributable to a prior Loss of Benefit, the Lessor shall pay to the Lessee an amount equivalent to the tax attributable to such Loss of Benefit subsequently recovered, so long as such payment to the Lessee does not reduce the Lessor's Net Return. It is understood that any payments required under this proviso shall, in the reasonable opinion of Lessor, be in an amount that would cause the Lessor's Net Return to equal the net return that would have been realized by the Lessor if such Loss had not occurred.

Notwithstanding the provisions of the immediately preceding paragraph, there shall be no increase made in rentals nor any payment be required to be made by the Lessee if the Lessor shall have suffered such Loss with respect to all or part of such Unit as a direct result of the occurrence of any of the following events (hereinafter called Excluded Events):

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under Section 7 hereof; or

(ii) a voluntary transfer or other voluntary disposition by the Lessor or any transfer or disposition by the Lessor resulting from bankruptcy or other proceedings for relief of debtors in which the Lessor is the debtor, whether voluntary or involuntary, of any interest in such Unit or the voluntary reduction by the Lessor of its interest in the rentals from such Unit under the Lease (other than pursuant to the assignment of this Lease to the Vendor), unless, in each case, an Event of Default shall have occurred and be continuing; or

(iii) the failure of the Lessor to claim in a timely and proper manner (including all appropriate elections) in its Federal income tax return the Investment

Credit, the ADR Deduction or the Interest Deduction, except as provided in the last paragraph of this § 16(a); or

(iv) the failure of the Lessor to have sufficient liability for Federal income tax against which to credit such Investment Credit or sufficient income to benefit from the ADR Deduction or the Interest Deduction, as applicable; or

(v) any amendments to the Code enacted and effective after the Closing Date (defined in the Security Documentation); or

(vi) any other action or omission by Lessor, except any actions or omissions permitted by the terms of this Lease; provided, however, for this purpose only, the exercise by the Lessor of the option contained hereunder regarding a single payment will not be treated as an action or omission permitted by the terms of this Lease.

The Lessor shall promptly, upon its knowledge thereof, give written notice to the Lessee of any claim or proceeding in respect of which the Lessee would be required to make indemnification payments (as hereinbefore defined). The Lessor agrees that if, in the opinion of the Lessee's independent tax counsel who is acceptable to the Lessor (herein referred to as Counsel) a reasonable basis to contest the disallowance or recapture of all or a portion of the tax Benefits described above with respect to any Unit exists in respect of which the Lessee would be required to make indemnification payments (as hereinbefore defined) to the Lessor pursuant hereto, the Lessor shall, upon request and at the expense of the Lessee, contest such matter in good faith in such forum as Lessor, in its sole judgment, shall select (giving due consideration to advice of Counsel) and if the Lessor fails to contest, Lessee will not be required to indemnify Lessor for the Loss of tax Benefits as set forth in the seventh paragraph of this § 16(a); provided, however, that the Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all expenses which may be entailed therein. If after notice from the Lessor the Lessee does not request in a timely manner that Lessor contest the disallowance or recapture of the tax Benefits or in the opinion of Counsel no reasonable basis to contest such matter exists, then Lessee will have no further right of contest.

In the event Lessee requests that Lessor contest the disallowance or recapture of the tax Benefits and in the opinion of Counsel a reasonable basis to contest such matter exists, then the Lessor may, at its option, either take such action to contest the disallowance or recapture prior to making payment of any tax and interest and/or penalty attributable to the disallowance or recapture with respect to the Lessor of all or any portion of the tax Benefits with respect to any Unit or may make such tax payment and thereafter seek a refund (Tax Payment). If the Lessor contests prior to making such Tax Payment, such indemnification payable hereunder need not be paid by the Lessee while such action is pending. In such case, if the Final Determination (as hereinafter defined) shall be adverse to the Lessor, the indemnification payable hereunder shall be computed by the Lessor based on such Final Determination and the Lessee shall commence payment of indemnities on the date and in the manner and to the extent provided in the seventh paragraph of this § 16(a) and on or before such payment date, the Lessee shall pay to the Lessor as an additional payment hereunder an amount equal to all interest and penalty paid by the Lessor in respect of such Final Determination together with an amount sufficient to maintain the Lessor's Net Return. If the Lessor elects to make such Tax Payment prior to contesting the matter, such indemnification payable hereunder is to commence immediately in the manner and to the extent provided in the seventh paragraph of this § 16(a) and such payments by the Lessee due on and after the date of such Tax Payment shall be calculated on a basis so as to maintain Lessor's Net Return, and on or before such Tax Payment is due, the Lessee shall pay to the Lessor as an additional payment hereunder an amount equal to all interest and penalty paid by the Lessor included in such Tax Payment. If the Lessor seeks a refund after making such Tax Payment and the Final Determination shall be in favor of the Lessor, the Lessor shall at the Lessee's option, in lieu of having the rentals decreased as hereinbelow provided, forthwith upon receipt of refund of amounts previously paid, pay to the Lessee an amount consisting of the aggregate of the following (calculated on the same basis as Lessor's Net Return); (1) the appropriate amount of the increase in rental payments or lump sum payment which, under the Final Determination, would not have been payable by the Lessee to Lessor pursuant to the seventh paragraph of this Section 16(a), (2) the appropriate amount of the additional payment for any interest and/or penalty that was also paid by Lessee to Lessor pursuant to the preceding sentence, and (3) the appropriate amount of

interest on the above two items paid to the Lessor by the taxing jurisdiction. If Lessee does not elect the option contained in the preceding sentence, the rentals for the Units shall, beginning with the next rental payment due, and after receipt by the Lessor of such refund, be decreased to such amount or amounts as shall, in the reasonable opinion of the Lessor, cause the Lessor's Net Return to equal the net return that would have been realized by the Lessor if additional income taxes of the Lessor in the amount refunded had not been paid, provided, however, that such subsequent rentals shall not be reduced below the amounts required to satisfy the obligations of the Lessor under the Security Documentation; provided further, however, that the Lessor shall pay to the Lessee on the date it receives each of such subsequent rentals, an amount equal to the difference between the rentals that would have been payable but for the limitation specified in the preceding proviso and the rentals paid in accordance with this limitation, as long as such payment does not reduce Lessor's Net Return. Lessee agrees to pay to the Lessor on demand any reasonable expense incurred by the Lessor in connection with such contest. For purposes of this paragraph "Final Determination" is defined as a final decision of a Court of competent jurisdiction after all allowable appeals have been exhausted by either party to the action.

The Lessee's and the Lessor's agreements and obligations to pay any sums which may become payable pursuant to this § 16(a) and also § 16(b) shall survive the expiration or other termination of this Lease. The amount of any payment (including amounts attributable to tax, interest and penalty) the Lessee shall be required to pay with respect to any Loss of Benefit under this § 16(a) or Additional Expenditures under § 16(b) which is subject to indemnification shall be an amount sufficient to restore the Lessor to the same position, after considering the effect of the receipt of such indemnification payment by the Lessor on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that the Lessor would have been in had such payments not been made.

For purposes of this § 16(a) and of § 16(b) the term "Lessor" shall include any member of an affiliated group, within the meaning of Section 1504 of the Code, of which the Lessor is a member if consolidated returns are filed for such affiliated group for Federal income tax purposes.

In the event the rental rates shall be increased (or decreased) as hereinbefore provided, the Casualty Values set forth in § 7 hereof and the damages and amounts set forth in subparagraph (b) of § 10 hereof shall be increased (or decreased) accordingly; provided, however, that such Casualty Values shall not be reduced below the amounts required to satisfy the obligations of the Lessor under the Security Documentation; provided further, however, that the Lessor shall pay to the Lessee on the date it receives each of any payments with respect of a Casualty Occurrence an amount equal to the difference between the Casualty Value that would have been payable but for the limitation specified in the preceding proviso and the Casualty Value paid in accordance with this limitation, as long as such payment does not reduce Lessor's Net Return.

V. Opinion of Counsel. In the event of an unfavorable ruling or refusal or failure of the IRS to rule, and in the opinion of Lessor no reasonable argument of substance can be advanced that the transaction is a true lease for tax purposes, the Lessor will not have caused an Excluded Event if the Lessor does not claim in a timely manner on its Federal income tax return the Investment Credit, the ADR Deduction, the Interest Deduction, or report manufacturer's profit as an Intercompany Transaction. In such case, the Lessor must give notice to the Lessee of the Lessor's intention not to claim the tax Benefit on its Federal income tax return. After receipt of notice, the Lessee may contest the Lessor's opinion by engaging, at its expense, independent tax counsel, mutually agreed upon, to determine if it would be proper for the Lessor to treat the transaction as a true lease for tax purposes. If Lessee fails to contest within 30 days after notice of Lessor's opinion or if such independent tax counsel concurs with the Lessor, an Excluded Event will not occur and payment under the Pre-Ruling Indemnity shall be made without any further right of contest by the Lessee and thereupon Lessor and Lessee agree that Lessee shall be treated as the owner of the Equipment for tax purposes. Except as expressly provided in the preceding sentence, the failure of the Lessor to claim the tax Benefits in a timely manner shall constitute an Excluded Event.

§ 16(b). Rental Adjustment for Lessee's Capital Expenditures. In the event and to the extent that the cost of any improvement and/or addition to a Unit or any expenditure by the Lessee in respect of any Unit or this Lease (hereinafter called Additional Expenditures) made by the Lessee, under and pursuant to the terms of this Lease or otherwise,

is required to be included in the gross income of the Lessor for Federal income tax purposes (as hereinafter defined) at any time prior to the time such Unit is disposed of in a taxable transaction, then the rentals for the Units set forth in § 3 hereof shall, on the next succeeding rental payment date after the date on which the Lessee is required to furnish written notice thereof to the Lessor pursuant to the last paragraph of this § 16(b) after said inclusion in the Lessor's gross income is required, or the related tax is paid by Lessor, be increased to such amount or amounts as shall, in the reasonable opinion of the Lessor, after taking into account any present or future tax benefits that the Lessor reasonably anticipates it will derive from its additional investment in the Units by reason of said inclusion (including without limitation any available current deductions, future depreciation deductions and investment tax credit), cause the Lessor's Net Return to equal the Lessor's Net Return that would have been realized by the Lessor if the cost of such Additional Expenditures had not been includible in the Lessor's gross income.

In determining the present or future tax benefits to be taken into account by the Lessor in calculating the net rental increase required hereby, the Lessor shall attempt to maximize such benefits and hence minimize the increase in rents by making such elections (including where advantageous the applicable asset guideline repair allowance and accelerated depreciation, if then permitted) and utilizing such conventions and accounting methods as will further such objectives; provided, however, that the Lessor shall not be required to make any election or utilize a particular convention or accounting method if the Lessor determines, in its sole discretion but in good faith, that in so doing it will adversely affect its Federal income tax liability determined without regard to this transaction.

For purposes of this subsection the cost of Additional Expenditures made by the Lessee shall be deemed to be "required to be included in the gross income of the Lessor for Federal income tax purposes" if such inclusion is required by (i) any provision of the Code, other than any amendment of the Code enacted and effective after the Closing Date, or the applicable regulations thereunder; or (ii) any published revenue ruling of the Internal Revenue Service whether or not issued after the date of this Lease which relies upon any provision of the Code other than any amendment of the Code enacted and effective after the Closing

Date, and which has not been held invalid by a court having ultimate appellate jurisdiction over the Federal income tax liability of the Lessor; or (iii) an Examination Report from the Internal Revenue Service which relies upon any provision of the Code, other than any amendment of the Code enacted and effective after the Closing Date, accompanied by a thirty day letter (preliminary notice).

The Lessor agrees that it will, upon the written request and at the sole expense of the Lessee contest the inclusion of the cost of Additional Expenditures in the Lessor's gross income if such inclusion is required pursuant to (i), (ii) or (iii) of the preceding paragraph in such forum as it, in its sole judgment, shall select; provided, however, that the Lessor shall not be required to contest such inclusion unless it has received an opinion from independent counsel selected by the Lessee and acceptable to the Lessor that there is a reasonable basis for contesting such inclusion and the Lessee has advanced to the Lessor such sums as the Lessor may reasonably deem necessary to pay the costs of such contest.

The Lessee agrees that, within 30 days after the close of any calendar year (or in the event the Lessor gives the Lessee written notice that the Lessor's taxable year closes on a date specified therein other than December 31, within 30 days after said date) in which the Lessee has made Additional Expenditures which the Lessee believes are, or are of a type which it has been advised by the Lessor may be, required to be included in the gross income of the Lessor for Federal income tax purposes prior to the time such Unit is disposed of in a taxable transaction, the Lessee will give written notice thereof to the Lessor describing such Additional Expenditures in reasonable detail and specifying the cost thereof with respect to each Unit.

§ 17. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, interest at a rate per annum equal to the greater of 135% of the Prime Rate or 10-3/4% on the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 18. Notices. Any notice required or permitted

to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at 767 Fifth Avenue, New York, N. Y. 10022, Attention of Director of Special Financing; and

(b) if to the Lessee, at 400 West Madison Street, Chicago, Illinois 60610; Attention Treasurer;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Vendor at at 33 North LaSalle Street, Chicago, Illinois 60690, Attention of Corporate Trust Department;

§ 19. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Except for the Participation Agreement and the Agreement which appears as Exhibit B thereto, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

§ 20. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the assignment hereof to the Vendor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 21. Law Governing. The terms of this Lease and

all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY,

by

J. M. Butler
Vice President

[Corporate Seal]

Attest:

Prane Kohler-Rausch
Assistant Secretary

GMAC LEASING CORPORATION,

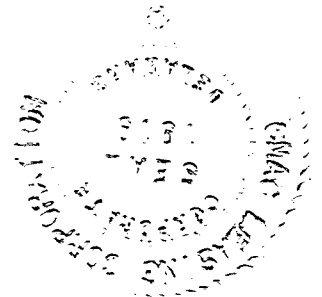
by

L. J. Patton
Vice President

[Corporate Seal]

Attest:

Virginia R. Kenney
Assistant Secretary



STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this 13th day of July, 1976, before me personally appeared John M. Butler, to me personally known, who, being by me duly sworn, says that he is a Vice President of CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Margaret Hanlon
Notary Public

[Notarial Seal]

My Commission expires

MARGARET HANLON

Notary Public

Du Page Co. Illinois

My Commission Expires Feb. 25, 1978

STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

On this 14th day of July, 1976, before me personally appeared G. Thomas Patton Jr., to me personally known, who, being by me duly sworn, says that he is Vice President of GMAC LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Patricia A. Sheridan
Notary Public

[Notarial Seal]

PATRICIA A. SHERIDAN
Notary Public, State of New York
No. 41-3905395
Qualified in Queens County
Certificate Filed in New York County
Commission Expires March 30, 1978

SCHEDULE 1 TO LEASE

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>
1,500 hp. diesel-electric locomotive, General Motors model GP-15-1	14	CNW 4411-4424

SCHEDULE 2 TO LEASE
CASUALTY VALUES

<u>Rent Payments</u>	<u>Percentage of Purchase Price</u>
No. 1	101.8131%
No. 2	102.9799
No. 3	103.5091
No. 4	104.2455
No. 5	104.3834
No. 6	104.1465
No. 7	103.8609
No. 8	103.5630
No. 9	103.3079
No. 10	103.0649
No. 11	102.7675
No. 12	102.4419
No. 13	102.0635
No. 14	95.2899
No. 15	94.6214
No. 16	93.9112
No. 17	93.1297
No. 18	92.2968
No. 19	91.4003
No. 20	90.4648
No. 21	89.4698
No. 22	82.2276
No. 23	81.1332
No. 24	80.0039
No. 25	78.8288
No. 26	77.6221
No. 27	76.3750
No. 28	75.0980
No. 29	73.7951
No. 30	66.2611
No. 31	64.8977
No. 32	63.5041
No. 33	62.0839
No. 34	60.6253
No. 35	59.1375
No. 36	57.6281
No. 37	56.1063
No. 38	54.5685
No. 39	53.0098
No. 40	51.4359

Rent PaymentsPercentage of Purchase Price

No. 41	49.8779
No. 42	48.3238
No. 43	46.7593
No. 44	45.1799
No. 45	43.5976
No. 46	42.0065
No. 47	40.4054
No. 48	38.7894
No. 49	37.1708
No. 50	35.5436
No. 51	33.9067
No. 52	32.2550
No. 53	30.6015
No. 54	28.9399
No. 55	27.2690
No. 56	25.5835
No. 57	23.8973
No. 58	22.2035
No. 59	20.5010
No. 60	20.0000
No. 61	20.0000